

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

VetBridge Product Development Subsidiary I
(NM-OMP), LLC,

Plaintiff,

v.

NewMarket Pharmaceuticals, LLC,

Defendant.

Civil Action No. 5:18-cv-06147-BCW

NewMarket Pharmaceuticals, LLC,

Third-Party Plaintiff,

v.

VetPharm, Inc.,

Third-Party Defendant.

DECLARATION OF DOUGLAS A. FOSS

Douglas A. Foss, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

1. I am an attorney licensed to practice law in the State of New York and I represent third-party defendant VetPharm, Inc. (“VetPharm”) in this action. My motion for admission *pro hac vice* is pending before the Court.
2. I make this declaration in support of VetPharm’s motion to dismiss the third-party complaint. This declaration is based on my personal knowledge as counsel for VetPharm in this action and in a related action pending before the United States District Court for the

District of New Jersey, captioned *NewMarket Pharmaceuticals, LLC v. VetPharm, Inc. et al.*, Civil Action No. 17-cv-01852 (the “New Jersey Action”).

3. As shown by the documents attached to this declaration, Judge Shipp in the New Jersey Action twice ordered NewMarket to arbitrate its claims against VetPharm. NewMarket has attempted to frustrate that arbitration process by refusing to pay its one-half share of the arbitrator’s fees and making serial requests to Judge Shipp to intervene in the arbitration. Judge Shipp has repeatedly declined to do so.

4. Attached as **Exhibit 1** is a true and correct copy of the CM/ECF docket sheet in the New Jersey Action.

5. Attached as **Exhibit 2** is a true and correct copy of the Order entered by the Honorable Michael A. Shipp, U.S. District Judge, in the New Jersey Action on April 5, 2017.

6. Attached as **Exhibit 3** is a true and correct copy of the Order entered by the Honorable Michael A. Shipp, U.S. District Judge, in the New Jersey Action on December 13, 2018.

7. Attached as **Exhibit 4** is a true and correct copy of a letter to Judge Shipp from NewMarket’s local counsel in the New Jersey Action, Joel A. Pisano, dated February 11, 2019.

8. Attached as **Exhibit 5** is a true and correct copy of a letter to Judge Shipp from VetPharm’s local counsel in the New Jersey Action, Kelly Jones Howell, dated February 13, 2019, and the exhibit thereto.

9. Attached as **Exhibit 6** is a true and correct copy of a letter to Judge Shipp from Mr. Pisano, dated February 27, 2019.

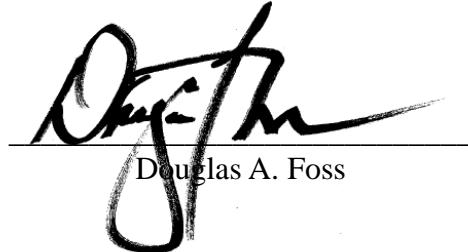
10. Attached as **Exhibit 7** is a true and correct copy of a letter to Judge Shipp from Ms. Howell, dated February 28, 2019.

11. Attached as **Exhibit 8** is a true and correct copy of a letter to Judge Shipp from Mr. Pisano dated April 11, 2019.

12. Attached as **Exhibit 9** is a true and correct copy of a letter to Judge Shipp from Ms. Howell dated April 12, 2019.

13. For the reasons set forth in accompanying suggestions, VetPharm respectfully requests that the Court dismiss NewMarket's third-party complaint.

Executed on April 29, 2019.



Douglas A. Foss